

Section 122, Title 14, CCR is amended to read:

§122. Lobsters, Permits to Take.

(a) Classes of Lobster Permits.

(1) There is a transferable lobster operator permit, a non-transferable lobster operator permit and a lobster crewmember permit.

(2) Under operator permits issued by the department, licensed commercial fishermen may use traps to take spiny lobsters for commercial purposes in Districts 18, 19, 20A, and that part of District 20 southerly of Santa Catalina Island between Southeast Rock and China Point. No other method of take is authorized for the commercial harvest of spiny lobsters.

(3) Any licensed commercial fisherman not eligible to obtain a lobster operator permit pursuant to this section may purchase a lobster crewmember permit, authorizing him/her to accompany the holder of a lobster operator permit and to assist that person in the commercial take of spiny lobster.

(b) Each lobster permit shall be issued annually and shall be valid for the period of the commercial lobster season. Each operator and crewmember permittee shall have his/her permit in possession when taking lobsters.

(c) Except as provided in this section A- a permit shall not be assigned or transferred, and any right or privilege granted thereunder is subject to revocation, without notice, by the Fish and Game Commission, at any time.

(d) Applicants for the renewal of lobster operator permits shall have held a valid, ~~unrevoked~~ lobster operator permit, that has not been suspended or revoked, in the immediately preceding permit year.

(e) ~~Number of Permits:~~ Transferable Lobster Operator Permit Qualification Criteria and Procedures:

OPTION A:

(1) To qualify for a transferable lobster operator permit an individual shall hold a valid 2005-06 lobster operator permit that has not been suspended or revoked and have landed a minimum of 500 pounds of lobster per year during any 4 of the 5 permit years from 1996-97 through 2000-01, inclusive, or have landed a minimum of 2,000 pounds of lobster per year during any [1 OR 2] of those 5 permit years as documented by fish landing receipts submitted to the department in his/her name and commercial fishing license identification number pursuant to section 8046, Fish and Game Code.

Or OPTION B:

(1) To qualify for a transferable lobster operator permit an individual shall hold a valid 2005-06 lobster operator permit that has not been suspended or revoked and have landed a total of [500 – 80,000] pounds of lobster within the time period commencing with the [1996-97 – 2000-01] season and ending with the [2000-01 – 2003-04] season as documented by fish landing receipts submitted to the department in his/her name and commercial fishing license identification number pursuant to section 8046, Fish and Game Code.

(2) Beginning on July 1, 2005 or 30 calendar days after the effective date of these regulations, whichever date is later, the department shall make an initial determination, based on department records, of which holders of valid 2005-06 lobster operator

permits, that have not been suspended or revoked, meet the qualifications for a transferable lobster operator permit specified in paragraph (1) above and shall mail notice of such determination, to the last address on record with the department, to all 2005-06 lobster operator permit holders. Each person who meets the qualifications will have his/her permit designated by the department as a transferable lobster operator permit.

(3) The holder of a 2005-06 lobster operator permit who is notified by the department that he/she does not meet the qualifications for a transferable lobster operator permit may submit to the department's License and Revenue Branch, 3211 S Street, Sacramento, CA 95816 copies of fish landing receipts for lobster that have been issued in his/her name and commercial fishing license identification number pursuant to sections 8043 and 8046, Fish and Game Code that demonstrate he/she does meet the qualifications in paragraph (1) above. Such fish landing receipts and a letter requesting that his/her permit be designated as a transferable lobster operator permit letter shall be submitted to the department on or before March 31, 2006. Any request postmarked or presented after March 31, 2006 will not be considered.

(4) The holder of a 2005-06 lobster operator permit not able to meet these qualification criteria or meeting them pursuant to paragraph (3) above and failing to submit his/her fish landing receipts on or before March 31, 2006 shall have his/her permit designated a non-transferable lobster operator permit, effective with the 2006-07 license year.

(5) The holder of a valid, ~~unrevoked~~ lobster operator permit that has not been suspended or revoked, from the immediately preceding permit year shall be eligible to purchase a lobster operator permit of the same classification regardless of the number issued.

(f) Procedures and Deadline for Permit Renewal and Forfeiture of Non-renewed Permits.

Applications for renewal of transferable and non-transferable lobster operator permits must be received by the department or if mailed, postmarked not later than ~~May 31~~ April 30 of each year. Applications presented or postmarked after ~~May 31~~ and before ~~July 1~~ April 30 and before June 1 will be assessed a \$50 late fee-late penalty pursuant to Section 7852.2 of the Fish and Game Code. Applications postmarked or presented after ~~June 30~~ May 31 will not be considered. The holder of a transferable or non-transferable lobster operator permit who fails to renew his/her permit on or before May 31 will be considered to have forfeited that permit to the department and shall thereafter be able to fish for lobster only under the authority of a lobster crewmember permit or by obtaining a transferable lobster operator permit pursuant to these regulations.

(g) Procedures, Timelines and Initial Limit on Permit Transfers

(1) The holder of a valid transferable lobster operator permit that has not been suspended or revoked may transfer his/her permit to another person licensed as a California commercial fisherman. The application to transfer a permit shall be in the form of a notarized letter from the existing permit holder identifying the transferee and consist of the original transferable lobster operator permit, a copy of the transferee's commercial fishing license and a nonrefundable permit transfer fee of five hundred dollars (\$500). The application shall be submitted to the department's License and Revenue Branch, 3211 "S" Street, Sacramento, CA 95816. The transferable lobster operator permit shall be valid for the remainder, if any, of the then current lobster

season and may be renewed in subsequent years pursuant to these regulations. If the transferee holds a non-transferable lobster operator permit, that permit shall be cancelled.

(2) Not more than [2 to 25] applications to transfer a permit shall be processed by the department during each license year (April 1 – March 31) until March 31, 2008 after which date there is no limit on the number of transfers that may be processed during a license year. Applications will be processed in the order received. If on any given day the number of applications received is greater than the available number of transfers the department shall conduct a drawing to determine which application(s) shall be processed. This section shall not apply in the event of the death of the permit holder. The estate of the holder of a transferable lobster operator permit may renew that permit as provided for in these regulations if needed to keep it valid. The estate of the decedent may transfer that permit pursuant to subsection (g)(1) above not later than one year from the date of death of the permit holder as listed on the death certificate.

(h) Trap Limitation on Permits Issued by Transfer

(1) Not more than 400 lobster traps may be fished or placed in the water by the holder of a transferable lobster operator permit that has been issued to that person pursuant to subsection (g), above. Such permit shall be marked by the department as being valid for not more than 400 lobster traps.

(g) ~~(h)~~ (i) No SCUBA equipment or other artificial breathing device may be used to take lobster on any boat being operated pursuant to a commercial lobster permit.

(h) ~~(i)~~ (j) All provisions of the Fish and Game Code and regulations of the Fish and Game Commission relating to lobsters shall be a condition of all permits to be fully performed by the holders thereof, their agents, servants, employees, or those acting under their direction or control.

(i) ~~(j)~~ (k) No lobster trap used under authority of this permit shall be pulled or raised or placed in the water between one hour after sunset to one hour before sunrise.

(j) ~~(k)~~ (l) All lobster traps and receivers impounding lobsters shall be individually buoyed. The buoys must be on the surface of the water, except after the first Tuesday in October when buoys may be submerged by means of metallic timing devices, commonly called "pop-ups."

(k) ~~(l)~~ (m) Each buoy identifying a lobster trap shall display the commercial fishing license identification number of the lobster operator permit holder followed by the letter P. The commercial fishing license number and the letter P shall be in a color which contrasts with that of the buoy and shall be at least one (1) inch in height and at least one-eighth (1/8) inch in width.

(l) ~~(m)~~ (n) Any person pulling or raising lobster traps and receivers bearing a commercial fishing license number other than his/her own must have in his/her possession from the party who holds the permit assigned to said gear written permission to pull the traps, or receivers.

(m) ~~(n)~~ (o) The employees of the department may disturb or move any lobster trap at any time while such employees are engaged in the performance of their official duties and shall inspect any lobster trap to determine whether it is in compliance with all provisions of the Fish and Game Code and regulations of the commission.

(n) ~~(o)~~ (p) During the closed season for the taking of spiny lobster, no buoy attached to any trap may be marked in such manner as to identify the trap as a lobster trap, except

that legally marked lobster traps may be placed in the water not more than six (6) days before the opening of the season and may remain in the water for not more than six (6) days after the close of the season, if the door or doors to such traps are wired open, the trap is unbaited, the buoy remains at the surface of the ocean, and no attempt is made to take spiny lobsters.

~~(e) (p)(g)~~ Restricted fishing areas.

(1) No lobster trap used under the authority of this permit shall be used within 750 feet of any publicly-owned pier, wharf, jetty or breakwater; however, such traps may be used to within 75 feet of any privately-owned pier, wharf, jetty or breakwater.

(2) No lobster traps shall be set or operated within 250 feet of the following specified navigation channels.

(A) Newport Bay: Starting at the demarcation line at the entrance to Newport Bay and extension of the west side channel line, proceed southeasterly on a bearing of 151° magnetic one nautical mile; then northeasterly 44° magnetic 500 feet; then northwesterly 331° magnetic one nautical mile to the demarcation line and an extension of the east side channel line.

(B) Dana Point Harbor: Starting from Dana Point east jetty light "6," proceed on a bearing of 120° magnetic 450 yards to red buoy "4"; then south 180° magnetic one nautical mile; then westerly 270°, 300 yards; then north 0° magnetic approximately one nautical mile to Dana Point Harbor light "5."

(C) Oceanside Harbor: Starting from Oceanside Harbor breakwater light "1," proceed on a bearing of 225° magnetic for one nautical mile; then southeast for 450 yards on a bearing of 110° magnetic; then northeast on a bearing of 35° magnetic for one nautical mile to Oceanside Harbor south jetty light "2"; then west-southwest on a bearing of 253° to the point of beginning at Oceanside Harbor breakwater light "1."

~~(p) (q)(r)~~ Records. Pursuant to section 190 of these regulations, any person who owns and/or operates any vessel used to take lobsters shall complete and submit an accurate record of his/her lobster fishing activities on a form (Daily Lobster Log, DFG 122 ~~(6/95)~~, see Appendix A) (7/96), incorporated herein by reference provided by the ~~Department~~ department.

~~(q) (r)(s)~~ The person required to submit logs pursuant to these regulations shall have complied with said regulations during the immediate past license year, or during the last year such person held a permit, in order to be eligible for a successive year annual permit.

~~(r) (s)(t)~~ Any person denied a permit under these regulations may request a hearing before the commission to show cause why his/her permit request should not be denied. Such request must be received by the ~~Commission~~ commission within 60 days of the ~~Department's~~ department's denial. Any person denied the designation of his/her lobster operator permit as a transferable lobster operator permit pursuant to paragraph (e) of these regulations may appeal the denial to the commission. Such appeal must be received by the commission within 60 days of the department's denial.

NOTE

Authority cited: Sections 8254 and 8259, Fish and Game Code. Reference: Sections 2365, 7852.2, 8043, 8046, 8250-8259, 9002-9006 and 9010, Fish and Game Code.